

In the Court of Appeals of the State of Alaska

Ben Latham,

Applicant,

v.

State of Alaska,

Respondent.

Court of Appeals No. **A-14033**

Order

Date of Order: **August 18, 2022**

Trial Court Case Nos. **3AN-22-00547CR; 3AN-22-00294CR; 3AN-22-02840CR; 3AN-22-04213CR; 3AN-18-08176CI; 3AN-96-07123CR; 3AN-94-05044CR; 3PA-86-01346CR; 3PA-86-01986CR**

In 1986, Ben Latham was convicted by a jury of robbery in the first degree and criminal mischief in the second degree. Latham appealed that conviction, and the conviction and sentence were affirmed on appeal.¹ Latham later filed an application for post-conviction relief related to that 1986 conviction (superior court case number 3AN-18-08176CI), and that application was dismissed on October 27, 2020. On November 27, 2020, Latham filed an appeal of that October 2020 dismissal of his application for post-conviction relief. That appeal, case number A-13764, is currently active and awaiting consideration by this Court. Latham also appears to have multiple new criminal proceedings against him that are currently in the pre-trial stage; Latham appears to be represented by court-appointed counsel in these cases (superior court case numbers 3AN-22-00547CR, 3AN-22-00294CR, 3AN-22-02840CR, and 3AN-22-04213CR).

On July 24, 2022, Latham filed a petition for writ of habeas corpus in the Appellate Clerk's Office. There are multiple problems with Latham's petition for writ of habeas corpus.

¹ *Latham v. State*, 790 P.2d 717 (Alaska Cr. App. 1990).

First, Latham has attempted to file his petition in the Alaska Supreme Court. Appellate Rule 404(a)(2) states that an original application for relief “shall be directed to the appellate court which would have jurisdiction over an appeal from the final judgment of the trial court in that action or proceeding.” Latham’s petition arises from criminal proceedings in the superior court, and thus this Court — rather than the Alaska Supreme Court — would have jurisdiction over any appeal from the superior court’s final judgement. *See* AS 22.07.020(c). Accordingly, under Appellate Rule 404(a)(2), Latham’s petition for writ of habeas corpus is properly directed to this Court rather than to the Supreme Court.

Second, Latham is currently attacking his conviction in the active and ongoing appeal in Court of Appeals case number A-13764. Appellate Rule 404(b)(3) declares that a petition for writ of habeas corpus in the appellate courts “[must] specifically set forth how the applicant has exhausted all other remedies available by law or rule.” Because the appeal in A-13764 is still ongoing, and because many of the claims in Latham’s petition for writ of habeas corpus are identical to his arguments in his briefing in the ongoing appeal, Latham may not bring his arguments in a petition for writ of habeas corpus because he has not exhausted all other remedies available.

Third, under Alaska law, a person must — unless there is good reason for not presenting the habeas petition to the trial court — litigate a petition for writ of habeas corpus in the trial court before asking an appellate court for habeas corpus relief. *See* Alaska Appellate Rule 404(b)(3):

If the application [for relief] seeks a writ of habeas corpus,
it shall comply with the requirements of Civil Rule 86(b),

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and shall state the reason for not making application to the superior court.

Latham's petition for a writ of habeas corpus cannot be presented to an appellate court before he has presented the habeas petition to the superior court, unless he can demonstrate some special reason why he could not present the petition to the superior court. While Latham has provided argument for why he cannot file his petition in the superior court, the Court does not find those arguments satisfactory.

Lastly, to the extent that Latham is challenging or otherwise seeking relief from superior court decisions in his recent pre-trial and ongoing criminal cases (superior court case numbers 3AN-22-00547CR, 3AN-22-00294CR, 3AN-22-02840CR, and 3AN-22-04213CR), Latham is precluded from doing so because, under Alaska Appellate Rule 517.1(a) and Rule 518(b), a party who is represented by an attorney may not appear or act on the party's own behalf. In other words, a party who is represented by counsel may not file a petition in the appellate courts on the party's own behalf.

Accordingly, **IT IS ORDERED:**

Latham's petition for writ of habeas corpus is **REJECTED** for filing in the Court of Appeals and this file is **CLOSED**.

Entered at the direction of Chief Judge Allard.

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Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Judge Zeman
Judge Marston
Judge Saxby
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